

Remarks

Claims 1-11, 13, 15-20, 23, 24, 26, and 28 are pending and at issue in the present application. Claims 1, 15, and 23 have been amended herein and claims 12, 14, 25, and 27 have been canceled by this amendment.

Applicants respectfully traverses the rejection of claims 1-11, 13, 15-19, 23, 24, 26, and 28 as obvious over varying combinations of Staller U.S. Patent No. 3,46,585 ("Staller"), Porchia *et. al.* U.S. Patent No. 5,647,100 ("Porchia *et. al.*"), Malin U.S. Patent No. 6,167,597 ("Malin"), and Ausnit U.S. Patent No. 4,578,813 ("Ausnit"). Further, applicants traverse the rejection of claims 20 and 28 as indefinite. Applicants have attached a declaration by James C. Pawloski to overcome such rejection. Reconsideration and withdrawal of these rejections is respectfully requested.

According to the Office action, Ausnit discloses "the claimed invention except that Ausnit shows one of the legs (38) of the second female closure element of the second closure mechanism (17) being straight instead of curved." To remedy this deficiency of Ausnit, the Office action cites Staller for its disclosure of "providing one of the legs of an analogous female closure element as a straightened portion (34) or as a curved arm portion (24)."

Applicants take the position that there is no *prima facie* case of obviousness for the claims at issue over Ausnit in view of Staller. The Office action contends that "because these two female closure element leg shapes were art-recognized equivalents ..., one of ordinary skill in the art would have found it obvious to substitute the straight leg (38) of the second female closure element of the second closure mechanism (17) in Ausnit for a curved leg." The basis for this rejection stated in the Office action is that: "Staller shows that a curved leg is an equivalent structure known in the art" to a straight leg and that "[r]eplacing the straight leg (38) of Ausnit with a curved leg, as discussed above, inherently meets the recitations "a second female closure element that is substantially identical to the first female closure element" and "a second female closure element that is substantially symmetrical to the first female closure element."

The basis for the above noted Office action rejection breaks down in light of the fact that "[i]n order to rely on equivalence as a rationale supporting an obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on applicant's disclosure or the mere fact that the components at issue are functional or mechanical equivalents." (MPEP § 2144.06). Neither

Ausnit nor Staller disclose or suggest first and second female closure elements having first and second legs that are substantially symmetric about a longitudinal centerline as recited in the claims at issue, or that asymmetric profiles are equivalents thereof. In fact, both Ausnit and Staller teach that asymmetric profiles are not equivalent to symmetric profiles.

Specifically, Staller discloses a novel contour for the outwardly facing surface of the rib element and introduces a novel groove structure which both aids the engagement of the inwardly facing tooth configuration but which itself offers little resistance to forces applied outwardly of the container for separating the elements. (*See* col. 2, lines 48-55 of Staller). Further, the closure element of Staller requires an asymmetrical groove structure because the hook members 27 and 28 are designed to engage different profiles, namely, a double curve contour of a rib element within a concave portion 20 and a tooth structure 21, respectively. (*See* col. 3, lines 12-24 of Staller). In addition, Staller states that the straightened portions 34 and 37 perform the important function of assisting the interlocking characteristic of the tooth member 36 and its cooperable hook element 40, resulting in the asymmetric profiles shown in FIGS. 2 and 4 of Staller. (*See* col 4, lines 21-25 of Staller).

Further, the Office action admits that Ausnit does not disclose or suggest symmetric profiles, i.e., one leg of Ausnit is straight instead of symmetrically curved. Ausnit discloses a reclosable bag having sets of fastener profiles including a plurality of rib like elements and a plurality of complementary intervening grooves for receiving the rib like elements. A lower cooperative portion of the fastener profiles includes means for strong resistance to opening from the inside of the bag and an upper cooperative portion of the fastener profile is arranged for relatively easier opening from the top of the bag by a separating manipulation from outside the bag. FIGS. 1-4 of Ausnit clearly show that the lower and upper cooperative portions of the fastener profile are asymmetric and the specification teaches specific reasons for this design choice. In particular, the specification states that "... to assist in the resistance to internal force separation of the hook flanges 23 and 28, the fastener element 27 is of curvate cross-section, providing a concavity in which the interlock hook flange 23 of an element 19 is received ...," and the back up flange 38 defines a pocket or socket groove 39 within which the fastener element 31 is received. (*See* col. 5, lines 48-56 of Ausnit).

Further, modifying the Ausnit fastener profile as suggested by the Office action would negate the stated desirability of “substantially assured resistance to opening of the fastener due to internal pressures within the pouch of the bag but relatively easy opening when desired by manipulation of the pull flanges 14 and 15,” as noted in col. 7, lines 2-5 of the Ausnit specification, because the additional curved leg that would replace the straight leg 38 would offer additional resistance to opening forces from outside the bag thereby altering the ratio of internal opening forces to external opening forces. Therefore, merely substituting the straight leg 38 of Ausnit for a curved leg as shown in Staller would at best yield two asymmetrical female closure elements and obviate the “unique” design choices taught in Ausnit.

Consequently, there is no reasonable basis to conclude that the replacement of the straight leg 38 of Ausnit with the curved legs of Staller would inherently meet the recitations of symmetric profiles as recited in the claims at issue as suggested in the Office action.

Furthermore, such modification of the fastener assembly of Ausnit proposed by the Office action would render Ausnit unsuitable for its intended purpose. Ausnit provides a lengthy discussion of the defects of the prior art. Ausnit proposes to remedy these defects by providing a fastener having the desirable fastener construction in an economical, highly efficient form. (*See* col. 2, lines 25-39 of Ausnit). Specifically, the Ausnit specification states that “one of the special attributes of the fastener assembly 13 of the present invention resides in that the two cooperatively related sets of profile elements are particularly well adapted for mutually facilitating alignment and interlocking closure interengagement by closing pressure applied from outside of the bag wall panels toward the fastener assembly.” (*See* col. 4, lines 57-64 of Ausnit). The alignment and interlocking closure interengagement functions are provided by the unique combination of features taught by the specification and figures of Ausnit. (*See* col. 6, line 64 of Ausnit). The suggested modification by the Office action requires alteration of parts of this unique combination to arrive at a closure mechanism quite different from what is disclosed or suggested in Ausnit. In fact, this combination of substituting the Staller profile with the Ausnit profile was already disparaged by Ausnit in its lengthy discussion of the deficiencies of the prior art, which directs one skilled in the art not to use the profiles as disclosed in Staller with the profiles of Ausnit. Specifically, Ausnit cites Staller as

another example of a single rib and groove arrangement with structure to resist opening of the fastener from internal pressures and states that:

[a] problem with such single rib and groove fastener profile structure is that unless the structure has a certain size or stiffness and is manufactured to fairly exacting dimensions some difficulty is often encountered in effecting registration of the complementary profiles in fastener closing maneuver thereby making the fastener more difficult to interlock.

(Col. 1, lines 27-33 of Ausnit). Further, as noted above regarding the Ausnit and Staller combination, the resulting profiles would still not be symmetric as recited in the claims at issue. Therefore, in light of the above teaching of Ausnit, it would not appear that by replacing the straight leg 38 of Ausnit with a curved leg of Staller as discussed above, would result in a fastener assembly that is well adapted for mutually facilitating alignment and interlocking closure interengagement by closing pressure applied from outside of the bag wall panels toward the fastener assembly as required by Ausnit. To state a prima facie case of obviousness, a proposed modification cannot render the prior art unsatisfactory for its intended purpose. *In re Gordon*, 733 F. 2d 900, 902 (Fed. Cir. 1984). Because of the foregoing reasons, the applicants contend that the Office action does not state a prima facie case of obviousness for the present claims over the cited art.

In addition, neither Porchia *et. al.* nor Malin cure the deficiencies of Ausnit and Staller. Porchia *et. al.* discloses a closure member that includes opposing and longitudinally extending interlockable rib and groove profiles to provide an audible intermittent clicking sensation as the rib and groove profiles are pressed into an interlocking relation.

Malin discloses a zipper strip for a reclosable package, wherein the zipper strip includes a male profile and an asymmetrical female profile. At least two male interlocking members extend from a base toward the opposite female interlocking member, wherein each member has two hook portions extending from a free end thereof.

Still further, because independent claims 1, 15, and 23 are not disclosed or suggested, it stands that any claim dependent on independent claims 1, 15, and 23 is not disclosed or suggested by the cited art. As a result, each of claims 2-11, 13, 16-19, 24, and 26 is allowable for at least the reasons disclosed above with regard to claims 1, 15, and 23. Therefore, reconsideration and

withdrawal of the rejections of claims 1-11, 13, 15-20, 23, 24, 26 and 28 and allowance thereof are respectfully requested.

If there are any issues remaining that can be resolved by telephone, the examiner is encouraged to call the undersigned at 312-263-3806.

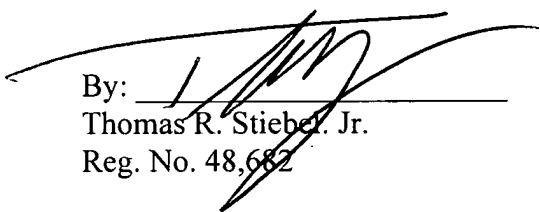
Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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